

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13 THE HONORABLE ROBERT S. LASNIK  
14  
15

16  
17  
18  
19  
20  
21  
22  
23  
24 UNITED STATES DISTRICT COURT  
25 WESTERN DISTRICT OF WASHINGTON  
26 AT SEATTLE  
27  
28  
29  
30

31 MICHAEL AXTMAN,  
32  
33 Plaintiff,

34 v.  
35

36 KNOWLEDGE LEARNING  
37 CORPORATION, a Delaware company,  
38 and KC DISTANCE LEARNING, INC., a  
39 Delaware company, and KINDERCARE  
40 LEARNING CENTERS, INC., a Delaware  
41 company, and K12, INC, a Delaware  
42 company,  
43

44 Defendants.

45 No. 2:11-cv-00106-RSL  
46  
47

48 ANSWER AND AFFIRMATIVE DEFENSES  
49 OF DEFENDANTS K12, INC. AND KC  
50 DISTANCE LEARNING, INC.  
51

52 COME NOW defendants K12, Inc. and KC Distance Learning, Inc. ("KCDL")  
53 (collectively hereinafter, "Defendants"), by and through their undersigned counsel, and answer  
54 plaintiff Michael Axtman's Complaint as follows. Note that due to mergers in July 2010,  
55 KCDL no longer exists.

56 I.  
57  
58

59 1.1 Paragraph 1.1 of the Complaint is a description of plaintiff's purported claims,  
60 which does not require an answer. To the extent that Paragraph 1.1 contains any factual  
61 allegations, they are denied.  
62  
63

64 ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
65 K12 AND KCDL (No. 2:11-cv-00106-RSL) - 1  
66

67 33643-0027/LEGAL20230429.1  
68

69 Perkins Coie LLP  
70 1201 Third Avenue, Suite 4800  
71 Seattle, WA 98101-3099  
72 Phone: 206.359.8000  
73 Fax: 206.359.9000  
74

1  
2  
3                   **II.**  
4  
5

6                 2.1    Paragraph 2.1 of the Complaint asserts legal conclusions that do not require an  
7                 answer. To the extent that Paragraph 2.1 contains any factual allegations, they are denied.  
8  
9                 Defendants do not, however, contest jurisdiction in this Court (noting, however, that KCDL no  
10                longer exists and that in the KCDL merger K12 and its subsidiaries, including the entity that  
11                survived the KCDL merger, expressly did not assume any liabilities with respect to plaintiff's  
12                deferred compensation).  
13

14                 2.2    Answering Paragraph 2.2 of the Complaint, defendants admit that K12 transacts  
15                business in Washington State and, on information and belief, so do defendants Knowledge  
16                Learning Corporation ("KLC") and KinderCare Learning Centers, Inc. ("KinderCare"). The  
17                balance of the paragraph asserts legal conclusions that do not require an answer. To the extent  
18                that Paragraph 2.2 contains any factual allegations not expressly admitted, they are denied.  
19  
20                 Defendants do not, however, contest jurisdiction or venue (noting, however, that KCDL no  
21                longer exists and that in the KCDL merger K12 and its subsidiaries, including the entity that  
22                survived the KCDL merger, expressly did not assume any liabilities with respect to plaintiff's  
23                deferred compensation).  
24  
25

26                   **III.**  
27  
28

29                 3.1    Answering Paragraph 3.1 of the Complaint, defendants admit that plaintiff's  
30                employment was terminated by KLC. Defendants lack information sufficient to answer  
31                regarding plaintiff's citizenship and residence. Except as expressly admitted, defendants deny  
32                each and every allegation in the paragraph.  
33

34                 3.2    Answering Paragraph 3.2 of the Complaint, defendants admit, on information and  
35                belief, that KLC is a Delaware corporation. The balance of the paragraph asserts legal  
36                conclusions that do not require an answer. To the extent that Paragraph 3.2 contains any factual  
37                allegations not expressly admitted, they are denied.  
38  
39

40                 ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
41                 K12 AND KCDL (No. 2:11-cv-00106-RSL) – 2  
42

43                 33643-0027/LEGAL20230429.1

44  
45                 Perkins Coie LLP  
46                 1201 Third Avenue, Suite 4800  
47                 Seattle, WA 98101-3099  
48                 Phone: 206.359.8000  
49                 Fax: 206.359.9000  
50  
51

1           3.3     Answering Paragraph 3.3 of the Complaint, the second sentence of the paragraph  
2 asserts legal conclusions that do not require an answer. Each and every allegation in Paragraph  
3 3.3 is denied.  
4  
5

6           3.4     Answering Paragraph 3.4 of the Complaint, defendants admit, on information and  
7 belief, that KinderCare Learning Centers, Inc. ("KinderCare") is a Delaware corporation. The  
8 balance of the paragraph asserts legal conclusions that do not require an answer. To the extent  
9 that Paragraph 3.4 contains any factual allegations not expressly admitted, they are denied.  
10  
11

12           3.5     Answering Paragraph 3.5 of the Complaint, defendants admit that K12 is a  
13 Delaware corporation. The balance of the paragraph asserts legal conclusions that do not require  
14 an answer. To the extent that Paragraph 3.5 contains any factual allegations not addressed  
15 above, they are denied.  
16  
17

18                  IV.

19           4.1     Answering Paragraph 4.1 of the Complaint, defendants incorporate by reference  
20 the foregoing paragraphs of their Answer as if set forth herein at length.  
21  
22

23           4.2     Answering Paragraph 4.2 of the Complaint, defendants admit that plaintiff entered  
24 into an employment agreement that states that it is between plaintiff and KCDL and that it is  
25 effective January 12, 2007. Defendants admit that KLC issued paychecks to plaintiff. Paragraph  
26 6.2 of the employment agreement speaks for itself but, in general terms, purports to provide for  
27 the application of Washington law. Except as expressly admitted, each and every allegation in  
28 Paragraph 4.2 is denied.  
29  
30

31           4.3     Answering Paragraph 4.3 of the Complaint, defendants admit that plaintiff's  
32 employment was terminated by KLC effective November 28, 2009. The separation agreement  
33 speaks for itself but, to quote a portion of it, states that it is made and entered into "by and  
34 between [KLC] and [KCDL] (collectively, 'Employer') and Michael J. Axtman ('Employee')."  
35 Defendants admit that KLC issued payroll checks to plaintiff. Paragraph 17 of the separation  
36 agreement speaks for itself but, in general terms, purports to provide for the application of  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51

ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
K12 AND KCDL (No. 2:11-cv-00106-RSL) – 3

33643-0027/LEGAL20230429.1

Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 Washington law. Defendants deny that that the quoted portion of the fourth sentence of  
2 Paragraph 4.3 is a verbatim quotation from the separation agreement. Defendants deny that that  
3 the quoted portion of the fifth sentence of Paragraph 4.3 is a verbatim quotation from the  
4 separation agreement. Defendants admit, however, that the separation agreement does not  
5 purport to waive or release any rights or claims that plaintiff may have under the Nonqualified  
6 Deferred Compensation Plan maintained by KLC. Defendants deny the allegations in Paragraph  
7 4.3 regarding paragraph 15 of the separation agreement. Except as expressly admitted, each and  
8 every allegation in Paragraph 4.3 is denied.  
9

10       4.4 Answering Paragraph 4.4 of the Complaint, defendants admit that plaintiff is  
11 entitled to deferred compensation under the KLC/KinderCare Nonqualified Deferred  
12 Compensation Plan (hereinafter, the “KLC Plan”) —albeit not in a lump sum, but rather  
13 according to the timing rules set forth in the KLC Plan and plaintiff’s election pertaining thereto.  
14 Except as expressly admitted, each and every allegation in Paragraph 4.4 is denied.  
15

16       4.5 Paragraph 4.5 of the Complaint asserts a legal conclusion, which does not require  
17 an answer. To the extent that Paragraph 4.5 contains any factual allegations, they are denied.  
18

19       4.6 Answering Paragraph 4.6 of the Complaint, defendants lack sufficient information  
20 to answer as to KinderCare’s relationship to KLC.  
21

22       4.7 Answering Paragraph 4.7 of the Complaint, defendants admit that plaintiff is  
23 entitled to deferred compensation under the KLC Plan, albeit not in a lump sum, but rather  
24 according to the timing rules set forth in the KLC Plan and plaintiff’s election pertaining thereto.  
25 Defendants admit that certain then-current KCDL employees received lump-sum deferred  
26 compensation payments when KCDL merged in July 2010, but deny that plaintiff was an  
27 employee of KCDL at the time (or ever). Except as expressly admitted, each and every  
28 allegation in Paragraph 4.7 is denied.  
29

30       4.8 Answering Paragraph 4.8 of the Complaint, the first sentence of the paragraph  
31 states legal conclusions to which answer is not required, but defendants state that K12 is not a  
32

ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
K12 AND KCDL (No. 2:11-cv-00106-RSL) – 4

33643-0027/LEGAL20230429.1

Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 successor to the deferred compensation liability of KLC with respect to plaintiff. Each and every  
2 allegation in the paragraph is denied.  
3

4 4.9 Answering Paragraph 4.9 of the Complaint, defendants admit that KCDL merged  
5 with a subsidiary of K12 in July 2010. Defendants admit that certain of KLC's then-current  
6 employees were transferred to KCDL prior to the merger and received lump-sum payments of  
7 their deferred compensation pursuant to the KLC Plan. Except as expressly admitted, each and  
8 every allegation in Paragraph 4.9 is denied.  
9

10 4.10 Answering Paragraph 4.10 of the Complaint, with respect to the second sentence  
11 of the paragraph, defendants lack sufficient information to answer. To the extent that the  
12 paragraph contains other factual allegations, they are admitted or denied as set forth in this  
13 Answer, and defendants incorporate those admissions and denials by reference herein. The  
14 balance of the paragraph contains conclusions and argument and assertions too vague to answer,  
15 to which answer is not required. To the extent that the paragraph contains any factual allegations  
16 not addressed above or elsewhere in this Answer, they are denied.  
17

18 4.11 Answering Paragraph 4.11 of the Complaint, defendants deny that they have  
19 refused to provide plaintiff with any deferred compensation to which he is entitled. Defendants  
20 lack information sufficient to answer as to allegations regarding payments already made, but  
21 admit on information and belief that KLC has been paying the deferred compensation over time,  
22 albeit not in a lump sum, but rather according to the timing rules set forth in the KLC Plan and  
23 plaintiff's election pertaining thereto. Except as expressly admitted, each and every allegation in  
24 Paragraph 4.11 is denied.  
25

26 4.12 Answering Paragraph 4.12 of the Complaint, each and every allegation in the  
27 paragraph is denied.  
28

29 4.13 Answering Paragraph 4.13 of the Complaint, each and every allegation in the  
30 paragraph is denied.  
31

ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
K12 AND KCDL (No. 2:11-cv-00106-RSL) – 5

33643-0027/LEGAL20230429.1

Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1  
2  
3  
4  
5  
V.

6  
7  
8  
9  
10  
5.1 Answering Paragraph 5.1 of the Complaint, defendants incorporate by reference  
11  
12  
13  
14  
15  
16  
17  
18  
19  
the foregoing paragraphs of their Answer as if set forth herein at length.  
20  
21

22  
5.2 Answering Paragraph 5.2 of the Complaint, each and every allegation in the  
23  
24  
paragraph is denied.  
25  
26

27  
5.3 Answering Paragraph 5.3 of the Complaint, defendants admit that plaintiff has  
28  
29  
rights under the KLC Plan to deferred compensation, albeit not in a lump sum, but rather  
30  
31  
according to the timing rules set forth in the KLC Plan and plaintiff's election pertaining thereto.  
32  
33  
Defendants admit that certain of KLC's then-current employees were transferred to KCDL prior  
34  
35  
to the merger of KCDL. The balance of Paragraph 5.3 contains conclusions and argument to  
36  
37  
which answer is not required. To the extent that the paragraph contains factual allegations other  
38  
39  
than those addressed in this Paragraph 5.3, they are admitted or denied as set forth in this  
40  
41  
Answer, and defendants incorporate those admissions and denials by reference herein. To the  
42  
43  
extent that the paragraph contains any factual allegations not addressed elsewhere in this  
44  
45  
Answer, they are denied.  
46  
47

48  
5.4 Answering Paragraph 5.4 of the Complaint, defendants state that the KLC Plan  
49  
50  
speaks for itself regarding the consequences of a change in control, and defendants deny that the  
51  
52  
quoted language in Paragraph 5.4 is quoted from the KLC Plan. To the extent that the paragraph  
53  
54  
contains any additional allegations, they are denied.  
55  
56

57  
5.5 Answering Paragraph 5.5 of the Complaint, each and every allegation in the  
58  
59  
paragraph is denied.  
60  
61

62  
VI.

63  
6.1 Answering Paragraph 6.1 of the Complaint, defendants incorporate by reference  
64  
65  
the foregoing paragraphs of their Answer as if set forth herein at length.  
66  
67

68  
6.2 Answering Paragraph 6.2 of the Complaint, defendants admit that, based solely on  
69  
70  
the face of plaintiffs' Complaint and ignoring any affirmative defenses, the amount in  
71  
72

controversy exceeds the sum or value of \$75,000. Except as expressly admitted, each and every allegation in Paragraph 6.2 is denied.

6.3 Paragraph 6.3 of the Complaint contains conclusions, legal conclusions and argument to which answer is not required. To the extent that the paragraph contains factual allegations, they are admitted or denied as set forth in this Answer, and defendants incorporate those admissions and denials by reference herein. To the extent that the paragraph contains any factual allegations not addressed elsewhere in this Answer, they are denied.

6.4 Answering Paragraph 6.4 of the Complaint, each and every allegation in the paragraph is denied.

6.5 Answering Paragraph 6.5 of the Complaint, each and every allegation in the paragraph is denied.

XIV.

Responding to plaintiff's prayer for relief, including all numbered paragraphs thereto, defendants deny that plaintiff is entitled to any judgment in his favor and deny that plaintiff is entitled to any relief whatsoever.

## AFFIRMATIVE DEFENSES

Having answered plaintiff's Complaint, defendants assert the following affirmative defenses:

- A. Plaintiff's claims are preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*.

B. Plaintiff's Complaint fails to state a claim on which relief can be granted.

C. Plaintiff has failed to exhaust his administrative remedies under the KLC Plan.

D. Plaintiff's claims are or may be barred by the doctrines of waiver and/or estoppel.

E. On information and belief, KLC has paid part of plaintiff's deferred compensation as provided in the terms of the KLC Plan, and any award of damages must reflect a setoff of such payments.

ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
K12 AND KCDL (No. 2:11-cv-00106-RSL) – 7

33643-0027/LEGAL20230429.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 F. Plaintiff's claims under RCW 49.52.050 and .070 are barred because a bona fide  
2 dispute exists regarding the obligation to pay the deferred compensation at issue in this lawsuit.  
3

4 G. Defendants designate all denials herein as defenses to the extent necessary to  
5 provide it with a complete defense.  
6

7 H. Defendants reserve the right to amend this Answer or add other affirmative  
8 defenses as necessary as the case progresses.  
9

10 WHEREFORE, defendants request that the Court dismiss plaintiff's Complaint in its  
11 entirety, award defendants' costs and disbursements herein, and award such further relief as the  
12 Court may deem appropriate in the circumstances.  
13  
14

15 DATED: February 18, 2011

16 s/ Andrew Moriarty, WSBA No. 28651

17 AMoriarty@perkinscoie.com

18 **Perkins Coie LLP**

19 1201 Third Avenue, Suite 4800

20 Seattle, WA 98101-3099

21 Telephone: 206.359.8000

22 Facsimile: 206.359.9000

23  
24 Attorneys for Defendants  
25 K12, Inc. and KC Distance Learning, Inc.  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51

ANSWER & AFFIRMATIVE DEFENSES OF DFTS.  
K12 AND KCDL (No. 2:11-cv-00106-RSL) – 8

33643-0027/LEGAL20230429.1

Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1  
2  
3  
4  
**CERTIFICATE OF SERVICE**  
5  
6  
7  
8  
9

I hereby certify that on February 18, 2011, I electronically filed the foregoing with the  
Clerk of the Court using the CM/ECF system which sent notification of such filing to the  
following:

10  
11 Lisa Ann Sharpe  
12 Lasher Holzapfel Sperry & Ebberson PLLC  
13 601 Union Street, Suite 2600  
14 Seattle, WA 98101-4000  
15  
16  
17  
18  
19

20 s/ Andrew Moriarty  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51